2011 DRAFTING REQUEST

Bill

Received: **04/01/2011**

Received By: **phurley**

Wanted: **As time permits**

Companion to LRB:

For: **Andre Jacque (608) 266-9870**

By/Representing:

May Contact:

Drafter: **phurley**

Subject: **Courts - miscellaneous**
Criminal Law - miscellaneous

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Jacque@legis.wi.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Contributions to crime prevention organizations

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?				_____			S&L
/1	phurley 04/11/2011	jdyer 04/27/2011	mduchek 04/27/2011	_____ _____	sbasford 04/27/2011	sbasford 10/31/2011	

FE Sent For:

At intro 11/1/2011

<END>

2011 DRAFTING REQUEST

Bill

Received: **04/01/2011**

Received By: **phurley**

Wanted: **As time permits**

Companion to LRB:

For: **Andre Jacque (608) 266-9870**

By/Representing:

May Contact:

Drafter: **phurley**

Subject: **Courts - miscellaneous**
Criminal Law - miscellaneous

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Jacque@legis.wi.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Contributions to crime prevention organizations

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?				_____			S&L
/1	phurley 04/11/2011	jdyer 04/27/2011	mduchek 04/27/2011	_____ _____	sbasford 04/27/2011		

FE Sent For:

<END>

2011 DRAFTING REQUEST

Bill

Received: **04/01/2011**

Received By: **phurley**

Wanted: **As time permits**

Companion to LRB:

For: **Andre Jacque (608) 266-9870**

By/Representing:

May Contact:

Drafter: **phurley**

Subject: **Courts - miscellaneous**
Criminal Law - miscellaneous

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Jacque@legis.wi.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Contributions to crime prevention organizations

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	phurley	4/27 jld					S&L

FE Sent For:

<END>

State of Wisconsin
2007 – 2008 LEGISLATURE

LRB–2648/en
SRM:bjk:...

2007 SENATE BILL 244

AN ACT *to repeal* 753.40, 755.20, 757.17, 814.75 (4), 814.76 (3), 814.77 (3), 814.78 (4), 814.79 (3), 814.80 (4), 814.81 (4), 973.06 (1) (f) and 973.09 (1x); and *to amend* 778.027, 967.057 and 973.11 (1) (b) of the statutes; **relating to:** prosecution decisions based on certain payments to organizations or agencies and eliminating required payment of contribution surcharges to crime prevention organizations and funds.

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1b. 753.40 of the statutes is repealed.

SECTION 1d. 755.20 of the statutes is repealed.

SECTION 1e. 757.17 of the statutes is repealed.

SECTION 1f. 778.027 of the statutes is amended to read:

778.027 ~~Dismissals for~~ Prosecution decisions based on contributions to certain organizations or agencies and government attorney conduct. A prosecutor or an attorney representing the state or a political subdivision of the state may not, in exchange for a person's payment of ~~a contribution to an~~ money, other than restitution, to any organization or agency ~~specified in s. 973.06 (1) (f) 1.~~, dismiss or amend a citation or complaint alleging a violation that provides for a forfeiture or elect not to initiate an action or special proceeding based on such a violation.

SECTION 1h. 814.75 (4) of the statutes is repealed.

SECTION 1j. 814.76 (3) of the statutes is repealed.

SECTION 1k. 814.77 (3) of the statutes is repealed.

SECTION 1m. 814.78 (4) of the statutes is repealed.

SECTION 1o. 814.79 (3) of the statutes is repealed.

SECTION 1p. 814.80 (4) of the statutes is repealed.

SECTION 1t. 814.81 (4) of the statutes is repealed.

SECTION 2. 967.057 of the statutes is amended to read:

967.057 ~~Dismissals for~~ Prosecution decisions based on contributions to ~~certain~~ organizations and agencies. A prosecutor may not, in exchange for a person's payment of ~~a contribution to an~~ money, other than restitution, to any organization or agency ~~specified in s. 973.06 (1) (f) 1.~~, dismiss or amend a charge alleging a criminal offense or elect not to commence a criminal prosecution.

SECTION 2e. 973.06 (1) (f) of the statutes is repealed.

SECTION 2m. 973.09 (1x) of the statutes is repealed.

SECTION 2s. 973.11 (1) (b) of the statutes is amended to read:

973.11 **(1)** (b) Any requirement that the court may impose under s. 973.09 (1g), ~~(1x),~~ (4), and (7m).

(END)

LRBa0904/1
PJH:lmk&wlj:rs

SENATE AMENDMENT 1,

TO 2007 SENATE BILL 244

December 5, 2007 – Offered by COMMITTEE ON JUDICIARY, CORRECTIONS, AND HOUSING.

At the locations indicated, amend the bill as follows:

1. Page 1, line 2: after "agencies" insert "and eliminating required payment of contribution surcharges to crime prevention organizations and funds".

2. Page 2, line 1: before that line insert:

"**SECTION 1b.** 753.40 of the statutes is repealed.

SECTION 1d. 755.20 of the statutes is repealed.

SECTION 1e. 757.17 of the statutes is repealed.".

3. Page 2, line 1: delete "**SECTION 1**" and substitute "**SECTION 1f**".

4. Page 2, line 3: delete "~~**certain**~~" and substitute "**certain**".

5. Page 2, line 3: after "**agencies**" insert "**and government attorney conduct**".

6. Page 2, line 7: delete "action for" and substitute "action".

7. Page 2, line 8: delete "a forfeiture" and substitute "or special proceeding".

8. Page 2, line 8: after that line insert:

"**SECTION 1h.** 814.75 (4) of the statutes is repealed.

SECTION 1j. 814.76 (3) of the statutes is repealed.

SECTION 1k. 814.77 (3) of the statutes is repealed.

SECTION 1m. 814.78 (4) of the statutes is repealed.

SECTION 1o. 814.79 (3) of the statutes is repealed.

SECTION 1p. 814.80 (4) of the statutes is repealed.

SECTION 1t. 814.81 (4) of the statutes is repealed.".

9. Page 2, line 14: after that line insert:

"**SECTION 2e.** 973.06 (1) (f) of the statutes is repealed.

SECTION 2m. 973.09 (1x) of the statutes is repealed.

SECTION 2s. 973.11 (1) (b) of the statutes is amended to read:

973.11 **(1)** (b) Any requirement that the court may impose under s. 973.09 (1g), ~~(1x),~~ (4), and (7m).".

(END)

973.055 Domestic abuse assessments. (1) If a court imposes a sentence on an adult person or places an adult person on probation, regardless of whether any fine is imposed, the court shall impose a domestic abuse surcharge under ch. 814 of $75 for each offense if:

(a) 1. The court convicts the person of a violation of a crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.19, 940.20 (1m), 940.201, 940.21, 940.225, 940.23, 940.285, 940.30, 940.305, 940.31, 940.42, 940.43, 940.44, 940.45, 940.48, 941.20, 941.30, 943.01, 943.011, 943.14, 943.15, 946.49, 947.01, 947.012 or 947.0125 or of a municipal ordinance conforming to s. 940.201, 941.20, 941.30, 943.01, 943.011, 943.14, 943.15, 946.49, 947.01, 947.012 or 947.0125; and

2. The court finds that the conduct constituting the violation under subd. 1. involved an act by the adult person against his or her spouse or former spouse, against an adult with whom the adult person resides or formerly resided or against an adult with whom the adult person has created a child; or

(b) The court convicts a person under s. 813.12 (8) (a) or a conforming municipal ordinance.

(2) (a) If the surcharge is imposed by a court of record, after the court determines the amount due, the clerk of the court shall collect and transmit the amount to the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration as provided in s. 59.25 (3) (f) 2.

(b) If the surcharge is imposed by a municipal court, after a determination by the court of the amount due, the court shall collect and transmit the amount to the treasurer of the county, city, town, or village, and that treasurer shall make payment to the secretary of administration as provided in s. 66.0114 (1) (bm).

(3) All moneys collected from domestic abuse surcharges shall be deposited by the secretary of administration in s. 20.435 (3) (hh) and utilized in accordance with s. 46.95.

(4) A court may waive part or all of the domestic abuse surcharge under this section if it determines that the imposition of the full surcharge would have a negative impact on the offender's family.

History: 1979 c. 111; 1979 c. 221 s. 2202 (20); 1979 c. 355; 1981 c. 20 s. 2202 (20) (s); 1983 a. 27 s. 2202 (20); 1987 a. 27; 1989 a. 31; 1991 a. 39; 1993 a. 262, 319; 1995 a. 27, 201, 343, 353; 1997 a. 27, 35, 143; 1999 a. 150 s. 672; 1999 a. 185; 2001 a. 16; 2003 a. 33, 139, 225, 326, 327.

973.06 Costs, fees, and surcharges. (1) Except as provided in s. 93.20, the costs, fees, and surcharges taxable against the defendant shall consist of the following items and no others:

(a) The necessary disbursements and fees of officers allowed by law and incurred in connection with the arrest, preliminary examination and trial of the defendant, including, in the discretion of the court, the fees and disbursements of the agent appointed to return a defendant from another state or country.

(am) Moneys expended by a law enforcement agency under all of the following conditions:

1. The agency expended the moneys to purchase a controlled substance or controlled substance analog that was distributed in violation of ch. 961.

2. The moneys were expended in the course of an investigation that resulted in the defendant's conviction.

3. The moneys were used to obtain evidence of the defendant's violation of the law.

4. The agency has not previously been reimbursed or repaid for the expended moneys by the defendant.

(ar) If the defendant violated s. 947.017, the moneys expended by a state or local government agency for the following activities in connection with a threat under s. 947.017 (2):

1. The response to the threat by emergency medical personnel, as defined in s. 941.37 (1) (c).

2. The analysis of any substance alleged to be a harmful substance, as defined in s. 947.017 (1).

3. The medical treatment of persons who are alleged to have been exposed to an alleged harmful substance, as defined in s. 947.017 (1).

(b) Fees and travel allowance of witnesses for the state at the preliminary examination and the trial.

(c) Fees and disbursements allowed by the court to expert witnesses. Section 814.04 (2) shall not apply in criminal cases.

(d) Fees and travel allowance of witnesses for the defense incurred by the county at the request of the defendant, at the preliminary hearing and the trial.

(e) Attorney fees payable to the defense attorney by the county or the state. If the court determines at the time of sentencing that the defendant's financial circumstances are changed, the court may adjust the amount in accordance with s. 977.07 (1) (a) and (2).

(f) 1. An amount determined by the court to make a reasonable contribution surcharge to any of the following, if the court determines that the person has the financial ability to make the contribution surcharge and the contribution surcharge is appropriate:

a. A private nonprofit organization that has as its primary purpose preventing crime, encouraging the public to report crime or assisting law enforcement agencies in the apprehension of criminal offenders.

b. A law enforcement agency that has a crime prevention fund, if the contribution is credited to the crime prevention fund and is used for crime prevention purposes.

2. If the court does require a person to make a contribution surcharge to an organization or agency specified in subd. 1. but does not require the person to pay any fine that may be imposed for the offense or court costs, the court shall state on the record the reasons why it is not requiring the person to pay the fine or court costs. All contribution surcharges made under this paragraph shall be made to the clerk of circuit court for distribution to the organization or agency specified in subd. 1. The court may not order a person to make a contribution surcharge under this paragraph to a crime prevention organization that has not complied with the provisions of s. 757.17.

(g) An amount equal to 10% of any restitution ordered under s. 973.20, payable to the county treasurer for use by the county.

(h) The cost of performance of a test under s. 968.38, if ordered by the court.

(2) The court may remit the taxable costs, in whole or in part.

(3) If the court orders payment of restitution, collection of costs shall be as provided under s. 973.20.

History: Sup. Ct. Order, 67 Wis. 2d 585, 784 (1975); 1979 c. 356; 1981 c. 352; 1985 a. 29; 1987 a. 347, 398, 403; 1991 a. 39, 269; 1995 a. 27, 53, 448; 1999 a. 58, 69, 186; 2003 a. 104, 139.

An accused who cancels a jury trial at the last moment to accept a plea bargain risks both taxation of costs under s. 973.06 and assessment of jury fees under s. 814.51. State v. Foster, 100 Wis. 2d 103, 301 N.W.2d 192 (1981).

A court may not order reimbursement of a law enforcement agency for routine investigative activities. State v. Peterson, 163 Wis. 2d 800, 472 N.W.2d 571 (Ct. App. 1991).

Contribution under sub. (1) (e) toward a defendant's attorney fees payable by the county may not be taxed in an order separate from the sentence. State v. Grant, 168 Wis. 2d 682, 484 N.W.2d 371 (Ct. App. 1992).

Sub. (1) (c) does not limit recovery of expert witness fees to fees for court appointed witnesses. State v. Schmaling, 198 Wis. 2d 757, 543 N.W.2d 555 (Ct. App. 1995).

A court was authorized to order that a defendant pay the cost of DNA testing by a private laboratory as a cost under this section. State v. Beiersdorf, 208 Wis. 2d 492, 561 N.W.2d 749 (Ct. App. 1997), 95–1234.

Expenses incurred by a sheriff's department in transporting a witness from a Florida corrections facility to testify at the defendant's trial were chargeable to the defendant under s. 973.06 (1) (a). State v. Bender, 213 Wis. 2d 338, 570 N.W.2d 590 (Ct. App. 1997), 97–1095.

For costs to be imposed under sub. (1) (am), all the listed conditions must be met. State v. Neave, 220 Wis. 2d 786, 585 N.W.2d 169 (Ct. App. 1998), 97–3486.

A crime prevention organization under sub. (1) (f) is an organization designed to encourage the public to report incidences of crime to law enforcement agencies and to assist those agencies in apprehending criminals. It does not include law enforcement agencies. State v. Bizzle, 222 Wis. 2d 100, 585 N.W.2d 899 (Ct. App. 1998), 97–2616.

Sub. (1) (c) authorized the taxation of the costs of an expert's medical examination when the development of that evidence was used in the prosecution of the defendant although the examination was not done in contemplation of trial and the expert witness did not testify. State v. Rohe, 230 Wis. 2d 294, 602 N.W.2d 125 (Ct. App. 1999), 99–0233.

"Disbursements and fees" are given the same meaning in sub. (1) (a) and (c). Whether the expenses associated with orders to produce a defendant are taxable "fees of officers" under sub. (1) (a) depends upon whether they are ordinarily charged to and payable by another or are merely internal operating expenses of a governmental unit. State v. Dismuke, 2001 WI 75, 244 Wis. 2d 457, 628 N.W.2d 791, 99–1734.

The trial court has inherent authority to assess the cost of impaneling a jury against a party. The purpose of imposing jury costs is to deter disruptive practices that contribute to inefficiency in the court system. The trial court is not limited to imposing costs on parties, but may sanction an attorney whose conduct negligently disrupts the court's orderly administration of justice. O'Neil v. Monroe County Circuit Court, 2003 WI App 149, 266 Wis. 2d 155, 667 N.W.2d 774, 02–2866.

When a defendant agrees to reimburse the county for the attorney fees of standby counsel or the circuit court informs the defendant of his or her potential liability for the fees and standby counsel functions as traditional defense counsel, ss. 973.06 (1) (e) and 973.09 (1g) give a circuit court the authority to impose the attorney fees of standby counsel as a condition of probation. If a defendant does not agree to reimburse the county or is not informed of the potential obligation to pay the fees of standby counsel, payment of attorney fees may not be a condition of probation, under s. 973.06 (1) (e). When standby counsel acts primarily for the benefit of the court rather than as defense counsel, attorney fees for standby counsel are inappropriate. State v. Campbell, 2006 WI 99, ___ Wis. 2d ___, 718 N.W.2d 649, 04–0803.

The obligation of a defendant under this section is not dischargeable in bankruptcy. Matter of Zarzynski, 771 F.2d 304 (1985).

Right to counsel; repayment of cost of court–appointed counsel as a condition of probation 56 MLR 551.

973.07 Failure to pay fine, fees, surcharges, or costs or to comply with certain community service work. If the fine, plus costs, fees, and surcharges imposed under ch. 814, are not paid or community service work under s. 943.017 (3) is not completed as required by the sentence, the defendant may be committed to the county jail until the fine, costs, fees, and surcharges are paid or discharged, or the community service work under s. 943.017 (3) is completed, for a period fixed by the court not to exceed 6 months.

History: 1977 c. 29; 1979 c. 34, 111; 1981 c. 20; 1983 a. 27; 1985 a. 36; 1987 a. 27, 339; 1989 a. 64; 1991 a. 39; 1993 a. 16; 1995 a. 24; 1997 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 139.

Sections 973.05 (1), permitting a delay of 60 days for payment of a fine, and s. 973.07, allowing commitment to jail for nonpayment, are constitutional since the court may stay the sentence and put defendant on probation. The burden of proving inability to pay is on the defendant. State ex rel. Pedersen v. Blessinger, 56 Wis. 2d 286, 201 N.W.2d 778 (1972).

When a fine and payment schedule are reasonably suited to an offender's means, the offender carries a heavy burden of showing inability to pay. Will v. State, 84 Wis. 2d 397, 267 N.W.2d 357 (1978).

Commitment under this section may be consecutive to another term of incarceration. State v. Way, 113 Wis. 2d 82, 334 N.W.2d 918 (Ct. App. 1983).

The 6–month limit on commitments under this section is the aggregate amount of time a defendant may be jailed for nonpayment of a fine. State v. Schuman, 173 Wis. 2d 743, 496 N.W.2d 684 (Ct. App. 1993).

Incarceration as a means of collecting a fine is limited to 6 months by this section. It was error for a court to make payment of an old, unpaid fine a condition of probation for a new conviction when violation of probation exposed the defendant to incarceration of more than 6 months. State v. Oakley, 2000 WI 37, 234 Wis. 2d 528, 609 N.W.2d 786, 98–1099.

973.075 Forfeiture of property derived from crime and certain vehicles. (1) The following are subject to seizure and forfeiture under ss. 973.075 to 973.077:

(a) All property, real or personal, including money, directly or indirectly derived from or realized through the commission of any crime.

(b) 1m. Except as provided in subd. 2m., all vehicles, as defined in s. 939.22 (44), which are used in any of the following ways:

a. To transport any property or weapon used or to be used or received in the commission of any felony.

b. In the commission of a crime under s. 946.70.

c. In the commission of a crime in violation of s. 944.30, 944.31, 944.32, 944.33 or 944.34.

d. In the commission of a crime relating to a submerged cultural resource in violation of s. 44.47.

e. To cause more than $2,500 worth of criminal damage to cemetery property in violation of s. 943.01 (2) (d) or 943.012.

f. In the commission of a crime under s. 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 (2) or 940.32.

g. In the commission of a crime under s. 943.75 (2) or (2m).

2m. a. No vehicle used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under ss. 973.075 to 973.077 unless it appears that the owner or other person in charge of the vehicle had knowledge of or consented to the commission of the crime.

b. No vehicle is subject to forfeiture under ss. 973.075 to 973.077 by reason of any act or omission established by the owner of the vehicle to have been committed or omitted without his or her knowledge or consent.

c. If forfeiture of a vehicle encumbered by a bona fide perfected security interest occurs, the holder of the security interest shall be paid from the proceeds of the forfeiture if the security interest was perfected prior to the date of the commission of the crime which forms the basis for the forfeiture and he or she neither had knowledge of nor consented to the act or omission.

(bg) Any property used or to be used in the commission of a crime under s. 943.75 (2) or (2m), but if the property is encumbered by a bona fide perfected security interest that was perfected before the date of the commission of the current violation and the holder of the security interest neither had knowledge of nor consented to the commission of that violation, the holder of the security interest shall be paid from the proceeds of the forfeiture.

(bj) Any property used or to be used in the commission of a crime under s. 943.74, but if the property is encumbered by a bona fide perfected security interest that was perfected before the date of the commission of the current violation and the holder of the security interest neither had knowledge of nor consented to the commission of that violation, the holder of the security interest shall be paid from the proceeds of the forfeiture.

(bm) Any property used in the commission of a crime under s. 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 (2) or 940.32, but if the property is encumbered by a bonafide perfected security interest that was perfected before the date of the commission of the current violation and the holder of the security interest neither had knowledge of nor consented to the commission of that violation, the holder of the security interest shall be paid from the proceeds of the forfeiture.

(c) All remote sensing equipment, navigational devices, survey equipment and scuba gear and any other equipment or device used in the commission of a crime relating to a submerged cultural resource in violation of s. 44.47.

(d) A tank vessel that violates s. 299.62 (2) that is owned by a person who, within 5 years before the commission of the current violation, was previously convicted of violating s. 299.62 (2), but if the tank vessel is encumbered by a bona fide perfected security interest that was perfected before the date of the commission of the current violation and the holder of the security interest neither had knowledge of nor consented to the commission of that violation, the holder of the security interest shall be paid from the proceeds of the forfeiture.

(e) Any recording, as defined in s. 943.206 (5), created, advertised, offered for sale or rent, sold, rented, transported or possessed in violation of ss. 943.207 to 943.209 or s. 943.49 and any electronic, mechanical or other device for making a recording or for manufacturing, reproducing, packaging or assembling a recording that was used to facilitate a violation of ss. 943.207 to 943.209 or s. 943.49, regardless of the knowledge or intent of the person from whom the recording or device is seized. If a device subject to forfeiture under this paragraph is encumbered by a bona fide perfected security interest that was perfected before the date of the commission of the current violation and the holder of the security interest neither had knowledge of nor consented to the commission of that violation, the holder of the security interest shall be paid from the proceeds of the forfeiture.

(2) A law enforcement officer may seize property subject to this section upon process issued by any court of record having jurisdiction over the property. Except for vehicles used in the commission of a crime in violation of s. 944.30, 944.31, 944.32,

to pay the forfeiture or court costs. All contributions made under this section shall be made to the municipal court for distribution to the organization or agency specified in s. 973.06 (1) (f) 1. The municipal court may not require a person to make a contribution under this section to an organization or agency specified in s. 973.06 (1) (f) 1. that has not complied with the provisions of s. 757.17.

History:

1995 a. 28; 1999 a. 58, 69, 186.

757.17 Reporting by certain organizations and agencies.

Every organization or agency specified in s. 973.06 (1) (f) 1. that receives contributions under s. 753.40, 755.20, 973.06 (1) (f) or 973.09 (1x) shall submit a report annually by February 1 to the clerk of the court that ordered the contribution. The report shall be on a form designed and provided by the director of state courts and shall include all of the following information for the calendar year preceding the submittal of the report:

(1)

The amount of contributions received.

(2)

The names of the persons who made the contributions.

(3)

The expenditures made with the contributions.

(4)

The balance of the contributions remaining.

(5)

The name of the organization or agency that received the contribution and the names of the officers of the organization or agency.

History:

1999 a. 58, 186.

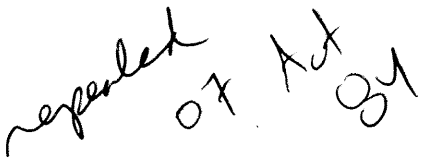
Hurley, Peggy

From: Jacque, Andre
Sent: Friday, April 01, 2011 1:10 AM
To: Hurley, Peggy
Subject: Drafting Request-Contributions to Crime Prevention Organizations

Hi Peggy,

Thanks again for all of your help today over the phone. Regarding my drafting request to again allow crime prevention organizations the ability to receive the sorts of contributions that were eliminated by 2007 WI Act 84, I'm looking to continue current law that contributions could not be made as part of decisions to not prosecute, but would recreate the former sections of statute below which would allow judges the option to require contributions to crime prevention organizations or offer such an option in place of community service or other penalties.

Thanks!
André



753.40 Contributions to certain organizations and agencies. (1)
If a circuit court finds in a forfeiture action that a person violated an ordinance that prohibits conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment, the circuit court may require, under ch. 814, the person to make a contribution surcharge not to exceed the maximum amount of the forfeiture that may be levied to an organization or agency specified in s. 973.06 (1) (f) 1. if the court determines that the violator has the financial ability to make the contribution.
(2)
If the court does require a person to make a contribution surcharge to an organization or agency specified in s. 973.06 (1) (f) 1. but does not require the person to pay a forfeiture or court costs, the court shall state on the record the reasons why it is not requiring the person to pay the forfeiture or court costs. All contribution surcharges made under this section shall be made to the clerk of circuit court for distribution to the organization or agency specified in s. 973.06 (1) (f) 1. The circuit court may not require a person to make a contribution surcharge under this section to an organization or agency specified in s. 973.06 (1) (f) 1. that has not complied with the provisions of s. 757.17.
History:
1995 a. 28; 1999 a. 58, 69, 186; 2003 a. 139.

755.20 Contributions to certain organizations and agencies. (1) If a municipal court finds in a forfeiture action that a person violated an ordinance that prohibits conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment, the municipal court may require the person to make a contribution not to exceed the maximum amount of the forfeiture that may be levied to an organization or agency specified in s. 973.06 (1) (f) 1. if the court determines that the violator has the financial ability to make the contribution.
(2)
If the court does require a person to make a contribution to an organization or agency specified in s. 973.06 (1) (f) 1. but does not require the person to pay a forfeiture or court costs, the court shall state on the record the reasons why it is not requiring the person

Hurley, Peggy

From: Jacque, Andre
Sent: Friday, April 08, 2011 2:41 PM
To: Hurley, Peggy
Subject: RE: Additional Information

Thanks Peggy,

The information you sent is extremely helpful. I would still like to proceed with the initial drafting request regarding the reinstatement of those sections previously indicated, and am reaching out to a number of judges to discuss the concerns in Nancy Rottier's letter.

Thanks again!

André

From: Hurley, Peggy
Sent: Friday, April 08, 2011 2:16 PM
To: Jacque, Andre
Subject: FW: Additional Information

Representative Jacque:

Ms. Nancy Rottier just sent me this document, which is an AG opinion on a few questions raised about the contributions to crime prevention organizations. After a quick read-through, it seems that only the second point, on what it means to be a "crime prevention organization" might be relevant to drafting your request. If you would like the statute defining a crime prevention organization to be more specific than prior law ("a private nonprofit organization that has as its primary purpose preventing crime, encouraging the public to report crime, or assisting law enforcement agencies in the apprehension of criminal offenders"), we discuss some options. The other points addressed in the AG opinion appear to concern some of the practices that had arisen, but were not really authorized by statute. Please let me know if you have any questions.

Peggy

From: Nancy Rottier [mailto:Nancy.Rottier@wicourts.gov]
Sent: Friday, April 08, 2011 2:05 PM
To: Hurley, Peggy
Subject: Additional Information

In rechecking the letter I just sent you about crime prevention organizations, I noticed it referred to an AG's opinion. I have attached a copy of that opinion. I now recall that what is in the AG's opinion is what I was thinking of as technical issues. The biggest ones were what organizations fit the statutory definition and whether pooled funds were allowed under the old statute. Hope this helps.

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

PEGGY A. LAUTENSCHLAGER
ATTORNEY GENERAL

Daniel P. Bach
Deputy Attorney General

114 East, State Capitol
P.O. Box 7857
Madison, WI 53707-7857

Mr. A. John Voelker
Director of State Courts
Post Office Box 1688
Madison, WI 53701-1688

Re: Crime Prevention Organization Accounts

Dear Mr. Voelker:

You have requested an opinion about the practices of some Wisconsin courts with respect to court-ordered payments to crime prevention organizations ("CPO") under Wis. Stat. § 973.06(1)(f). You asked the following questions:

(1) **Is a court committee a "private nonprofit organization" that can be considered a CPO? If not, is it acceptable for a court committee to act as an intermediary to distribute contributions to CPOs that are private nonprofit organizations?**

(2) **Can an organization qualify as a CPO if it applies contributions to a crime prevention program, even if that program operates within a larger organization that does not have crime prevention as its primary purpose?**

(3) **Does a contribution to a pooled fund without a designated CPO satisfy the statute?**

(4) **Are the methods described for determining the amount of the contribution (a flat $10 fee and the amount the defendant has on his or her person at the time of booking) consistent with § 973.06(1)(f), which provides that a court must determine "that the person has the financial ability to make the contribution and the contribution is appropriate"?**

The answer to questions 1, 3 and 4 is no, while the answer to the second question is unresolved and better left to judicial interpretation or legislative amendment.

Prior to addressing your questions in more detail, I offer some background observations regarding the relevant statutes governing CPO payments. Several statutes authorize courts to order defendants to make payments to CPOs as part of the disposition in both criminal and civil forfeiture proceedings. These payments are known as contribution surcharges. These statutes include:

1. Wis. Stat.§ 973.06(1)(f), permitting contribution surcharge as an allowable cost in a criminal case;

2. Wis. Stat. § 973.09(1x)(a), allowing a court to order a contribution surcharge as a condition of probation;

3. Wis. Stat. § 753.40, authorizing a circuit court to order a contribution surcharge as part of the disposition in a civil forfeiture action; and

4. Wis. Stat. § 755.20, granting municipal courts authority to order a contribution surcharge as part of the disposition in a forfeiture action.

When first enacted, these statutes referred to the recipient of the contribution surcharge as a "crime prevention organization." However, in *State v. Bizzle*, 222 Wis. 2d 100, 585 N.W.2d 899 (Ct. App. 1998), the court of appeals concluded that a CPO did not include a law enforcement agency. As a result, the Legislature amended these statutes substituting more specific entities for the more general term "CPO." These amendments limited entities eligible to receive these contribution surcharges to either:

1. A private nonprofit organization that has as its primary purpose preventing crime, encouraging the public to report crime or assisting law enforcement agencies in the apprehension of criminal offenders.

2. A law enforcement agency that has a crime prevention fund, if the contribution is credited to the crime prevention fund and is used for crime prevention purposes.

1999 Wis. Act 69, § 4.

Wisconsin law prohibits prosecutors or other attorneys representing the state or its subdivisions from dismissing or amending forfeiture or criminal charges in exchange for a contribution to an eligible organization or agency. Wis. Stat. §§ 778.027 and 967.057. Finally, these statutes require recipients of the contribution surcharge to file reports annually with the clerk of the court that ordered the contribution. The report must contain specific information. Wis. Stat. § 757.17.

With this background in mind, I will address the questions you raised.

(1) **"Is a court committee a "private nonprofit organization" that can be considered a CPO? If not, is it acceptable for a court committee to act as an intermediary to distribute contributions to CPOs that are private nonprofit organizations?"**

Whether a court committee is a "private nonprofit organization" within § 973.06(1)(f) raises a question of statutory interpretation. In ascertaining legislative intent, courts look to the plain meaning of a statute's language. *In re Commitment of Lombard*, 2004 WI 95, 273 Wis. 2d 538, ¶ 18, 684 N.W.2d 103. "[S]cope, context, and purpose are perfectly relevant to a plain-meaning interpretation of an unambiguous statute as long as the scope, context, and purpose are ascertainable from the text and structure of the statute itself, rather than extrinsic sources, such as legislative history." *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, 271 Wis. 2d 633, ¶ 48, 681 N.W.2d 110. As a general rule, courts will not consult extrinsic sources unless they determine that the statute's language is ambiguous. *Lombard*, 273 Wis. 2d 551, ¶ 19. However, they may refer to legislative history "to confirm or verify a plainmeaning interpretation." *See Kalal*, 271 Wis. 2d at ¶ 51.

Section 973.06(1)(f) does not define "private nonprofit organization." However, the words "private," "nonprofit," and "organization" are unambiguous. *See Fox v. Catholic Knights Insurance Society*, 2003 WI 87, 263 Wis. 2d 207, ¶ 19, 665 N.W.2d 181 (if a statute's language is unambiguous, courts apply the statute using the common and generally accepted meanings of the terms and may refer to a recognized dictionary to determine their common meaning); and Wis. Stat. § 990.01(1) ("[T]echnical words and phrases . . . that have a peculiar meaning in the law shall be construed according to such meaning.").

Private means in part "Not official; not clothed with office." Black's Law Dictionary, 1076 (5th ed. 1979). A court committee, whether consisting solely of members of the judiciary or otherwise organized by the judiciary, obtains funds through the official acts (judgments) of public officials (prosecutors who commence actions and judges who preside over them). Further, these officials hold their position on these committees by virtue of their role as public officials. Thus, under the circumstances, a court committee is not private, but public.

Had the Legislature intended to authorize public bodies, such as court committees, to receive and then disseminate these funds, it could have done so. Indeed, the Legislature specifically recognized that one type of public entity, "a law enforcement agency," could receive contribution surcharge if it was deposited in a crime prevention fund. Wis. Stat. § 973.06(1)(f)1.b. It further defined the limited uses to which these funds could be used, requiring money to be credited to "crime prevention funds" and used for "crime prevention purposes." Its decision not to include other public entities suggests that it intended to limit public entities eligible to receive contribution surcharges.

The phrase "nonprofit organization" is a technical legal term. Wisconsin statutes consistently define a "nonprofit organization" as "an organization described in section 501(c)(3) of the internal revenue code which is exempt from federal income tax under section 501(a) of the internal revenue code." *See* Wis. Stat. § 108.02(19); *see* Wis. Stat. §§ 14.20(1)(b), 23.0955(1), 23.097(1)(a), 23.197(4)(a)1., 46.2805(8), 46.856(1)(a), 46.87(4), 46.976(1), 46.986(2)(a)1., 48.982(1)(d), 103.21(2), 103.64(2), 134.695(1)(am), 171.30(4), 303.01(2)(b), 341.26(2)(f), 346.503(1m)(e), 422.501(2(b)3., 440.03(2), 440.41(1)(a), 560.18(1c), 560.60(18m), 560.9808(1)(b)4. and 560.10(4)(b)3. While § 973.06(1)(f) does not define "nonprofit organization," the commonly accepted technical definition would exclude any entity that has not received an exemption under section 501(c)(3) of the Internal Revenue Code. A court committee does not meet this criterion.

The court of appeals decision in *Bizzle* and the Legislature's subsequent action also support this conclusion. In *Bizzle*, the court concluded that a unit in a law enforcement agency was not a CPO. *Id.* In light of *Bizzle,* the Legislature subsequently amended § 973.06(1)(f), in a manner allowing a law enforcement agency to receive contribution surcharges under limited circumstances. *See* 1999 Wis. Act 69; and 1999 Wisconsin Assembly Bill 387. Neither *Bizzle* nor the subsequent amendments suggest that a public entity, such as a court committee, is entitled to these funds.

Under the circumstances, a court committee is neither a private nor a nonprofit organization. For these reasons, I conclude that a court committee does not constitute a "private nonprofit organization."

As a corollary, you ask whether a court committee may serve as a conduit through which compensation surcharges may be pooled and from which a distribution may be made at the end of the year. Because a court committee is not a "private nonprofit organization" or "law enforcement agency," I conclude that it may not. The plain language of the statute requires the courts to specify the entity, whether a private, nonprofit organization or a law enforcement agency's crime prevention fund, at the time of sentencing. Nothing within the statute authorizes the court to order a contribution surcharge but withhold designating the entity to receive it until a latter time.

(2) "Can an organization qualify as a CPO if it applies contributions to a crime prevention program, even if that program operates within a larger organization that does not have crime prevention as its primary purpose? For example, the Boys and Girls Club in a community may have an after-school program targeted to at-risk youth, and crime prevention maybe the objective of the program, but the Boys and Girls Club as a larger organization is focused on a broader mission."

As you recognize, courts may not order contribution surcharge payments to any nonprofit organizations. Rather, § 973.06(1)(f)1. limits the type of nonprofit organizations entitled to receive contribution surcharges to those that have as their "primary purpose preventing crime, encouraging the public to report crime or assisting law enforcement agencies in the apprehension of criminal offenders." You ask whether this section includes an organization that operates programs that serve in part to prevent crime as part of the organization's broader mission, or is it limited to an organization that focuses almost exclusively crime prevention initiatives? Resolution of this question turns on interpretation of the phrase "primary purpose."

Under one view, in § 973.06(1)(f)1., the adjective "primary" qualifying the word "purpose" is unambiguous since a court can ascertain its meaning through a dictionary. *See State v. Circuit Court for Dane County*, 2004 WI 58 53, 271 Wis. 2d 633, 668, 681 N.W.2d 110. Primary means "1. [f]irst or highest in rank, quality, or importance; principal." The American Heritage Dictionary of the English Language (4th ed. 2000). By using the word "primary" the Legislature arguably intended to distinguish nonprofit organizations whose chief goal is crime prevention from those that engage in crime prevention activities as part of a broader mission. *See Wagner v. Milwaukee County Election Commission*, 2003 WI 103 33, 263 Wis. 2d 709, 666 N.W.2d 816 ("[S]tatutes . . . should be construed to give effect to each and every word, clause and sentence and a construction that would result in any portion of a statute being superfluous should be avoided wherever possible.").

While the rules of statutory construction prevent the use of extrinsic sources to contradict a statute's plain meaning, courts consult legislative history to confirm a plain meaning interpretation. *Circuit Court for Dane County*, 2004 WI at 51. As indicated above, the legislature rewrote § 973.01(1)(f) following the Court of Appeals' *Bizzle* decision. *See* 1999 Wis. Act 69. In redrafting the statute, the Legislature eliminated the definition of crime prevention organization instead delineating the type of nonprofit and governmental entities eligible to receive surcharge payments. In adopting the definition for qualifying private, nonprofit organizations, the drafter relied upon the definition of CPO that the Bizzle court adopted.

> Note that it [1999 A.B. 387] eliminates the phrase "crime prevention organization" and instead refers to private nonprofit organizations that have

certain crime prevention-related purposes. The language is based on the court's definition of the phrase "crime prevention organization" in *State v. Bizzle*.

Letter from Legislative Attorney Jeffren Olsen to Representative Meyerhofer dated April 12, 1999, 1999 AB 387, Drafter's Note From the L.R.B. In *Bizzle*, the court adopted a narrow definition of CPO. "'[C]crime prevention organization,' is an organization within the State which is designed to encourage the public to report incidences of crime to law enforcement agencies and to assist such agencies in the apprehension of criminal offenders." *Bizzle*, 222 Wis. 2d at 113. In sum, one could argue that the legislative history of Act 69 confirms the unambiguous plain language interpretation that limits contributions to those organizations that have as their primary or core purpose crime prevention.

Alternatively, one could argue that the term "primary" is ambiguous in this context, and that the fundamental objective of the statute is frustrated by a too narrow reading of its terms. Primary may also be defined as follows: "6. Serving as or being an essential component, as of a system; basic." The American Heritage Dictionary of the English Language (4th ed. 2000). Under this interpretation, crime prevention must certainly be an essential part of a nonprofit organization's mission if it is to receive contribution surcharges. However, it need not be the organization's most important function in order to receive contribution surcharges. Indeed, to exclude organizations that serve a variety of purposes, including crime prevention, appears irrational. *See In Interest of R.W.S.*, 162 Wis. 2d 862, 881 n. 5, 471 N.W.2d 16 (1991) ("Public policy considerations exert a significant influence on the process of statutory interpretation by the courts."). An interpretation that supports payment of contribution surcharges to organizations that run crime prevention programs as part of a broader mission avoids this problem and serves public policy underlying the contribution surcharge. This interpretation is consistent with the Legislature's recognition that crime imposes costs on communities and that a surcharge to an organization that runs crime prevention programs serves important interests.

Under the circumstances, I do not feel it appropriate to opine as to the correct reading of the statute on this issue. There are valid legal bases supporting a literal, narrow construction of it, yet compelling arguments to the contrary. I would support legislative clarification on this point.

(3) **"Taken together, §973.06(1)(f) and §757.17 seem to describe a process where an individual defendant makes a contribution to a specific CPO, and the CPO later files a report listing the defendant's contribution and how it was spent. Does a contribution to a pooled fund without a designated CPO satisfy the statute? Does it matter that the CPO cannot report the names of the defendants who contributed?"**

For the reasons stated above, a court committee is not a private, nonprofit organization and it is not entitled to receive funds. In addition, the statute contemplates designation of the specific entity to receive the funds at the time of sentencing. As such, I conclude that payment to a pooled fund without a designated CPO is improper.

(4) "Are the methods described for determining the amount of the contribution (a flat $10 fee and the amount the defendant has on his person at the time of booking) consistent with §973.06(1)(f), which provides that a court must determine "that the person has the financial ability to make the contribution and the contribution is appropriate"?"

You correctly note that statutes authorizing the imposition of contribution surcharges require that the sentencing court determine a person's "financial ability to make the contribution." *See* §§ 973.06(1)(f), 973.09(1x)(a), 753.40 and 755.20. The statute's plain language requires a court to make an individualized determination in each case of a person's financial ability to pay.

No appellate court has identified the relevant standards applicable for assessing one's financial ability to make a contribution surcharge. However, judicial decisions interpreting other statutes related to the imposition of fines and restitution offer additional guidance. For example, courts must make "an individualized determination" of restitution ordered as a condition of probation based in part on the defendant's ability to pay, based on financial resources and future ability to pay. *State v. Davis*, 127 Wis. 2d 486, 502, 381 N.W.2d 333 (1986). The determination of one's ability to pay should occur at the time of sentencing. *See State v. Loutsch*, 2003 WI App. 16, 259 Wis. 2d 901, ¶ 25, 656 N.W.2d 781 (with respect to restitution) and *Will v. State*, 84 Wis. 2d 397, 404-05, 267 N.W.2d 357 (1978) (with respect to fines). While a court should make a finding of ability to pay a restitution or fine, a defendant does bear some responsibility for providing the court with information regarding his or her financial circumstances. *See* Wis. Stat. § 973.20(14)(b); *State v. Madlock*, 230 Wis. 2d 324, 336, 602 N.W.2d 104 (1999); *Will*, 84 Wis. 2d at 406-07 (once a repayment schedule is established, defendant bears burden of showing it is beyond his means); and *West Allis v. State ex rel. Tochalauski*, 67 Wis. 2d 26, 31, 226 N.W.2d 424 (1975) ("in the absence of . . . raising the issue, there is no requirement that the municipal court make an indigency determination."); *but see State v. Iglesias*, 185 Wis. 2d 117, 129, 517 N.W.2d 175 (1994) (requiring court to determine one's ability to pay a fine if it is raised in a timely manner in a postconviction motion).

Applying these principles in the contribution surcharge context, courts should conduct an individualized determination of a defendant's financial ability to pay. While the vast majority of defendants have the financial ability to pay a $10 contribution surcharge, the statutes and case law nonetheless require the court to make this assessment on an individualized basis.

The amount of money a defendant has on his or her person at the time of arrest may certainly be indicative of a defendant's ability to pay. Whether a court may automatically order payment of a contribution surcharge from that money without assessing one's ability to pay is a separate question. To be sure, in *Iglesias,* the supreme court concluded that a person who posted bond possesses the ability to pay a fine or a cost, which would include a contribution surcharge under § 973.06(1)(f), and the court may order payment from the posted bond under Wis. Stat. § 969.03(4). *See Iglesias,* 185 Wis. 2d at 131-32. The *Iglesias* court reached this conclusion based upon two considerations. First, there is a statutory presumption that bond money belongs to a defendant. Second, the Legislature has specifically authorized courts to use bond money to satisfy judgments entered for fines or costs. *Id.*

However, unlike statutory authority for converting posted bond to cover fines and costs, the Legislature has not authorized courts to convert money taken from defendants at the time of arrest for other uses. *But see Return of Property in State v. Jones*, 226 Wis. 2d 565, 600, 594 N.W.2d 738 (1999) (recognizing that in some circumstances cash seized at the time of arrest may be contraband and may not be returned to the person from whom it was seized under Wis. Stat. § 968.20). Under the circumstances, automatically setting the contribution surcharge to an amount in the defendant's possession at the time of arrest without further inquiry may be inconsistent with the court's obligation to determine financial ability to pay. While the amount seized at the time of arrest may be strongly indicative of a defendant's ability to pay, a court should nonetheless consider other factors in setting the contribution surcharge.

Even where a court finds that a defendant has an ability to pay, certain statutory and constitutional safeguards limit the maximum contribution surcharge that a court may order a defendant to pay. First, in civil forfeiture cases, courts may not impose a contribution surcharge that exceeds the maximum statutory forfeiture for the offense. *See* Wis. Stat. §§ 753.40(1) and 755.20(1). Second, a court may not order a contribution surcharge without imposing a forfeiture, fine or other court costs unless it states its reasons on the record. *See* §§ 753.40(2), 755.20(2), 973.06(1)(f) and 973.09(1x)(a). Third, whatever contribution surcharge a court orders may be subject to an analysis under the Excessive Fines Clause. U.S. Const. amend. VIII; *see also, State v. Boyd*, 2000 WI App 208, 238 Wis. 2d 693, ¶ 8, 618 N.W.2d 251.

CONCLUSION

In reaching these conclusions, I am mindful of the legitimate concern regarding the need to avoid an appearance of impropriety that prompted several Wisconsin circuit courts to develop court committees to distribute contribution surcharges. Likewise, I also appreciate the vital role that community organizations serve in crime prevention, even if their primary purpose is not crime prevention. However, I do not believe that the statutes, as currently drafted, authorize court committees to distribute contribution surcharges. Likewise, a question arises as to whether private nonprofit organizations providing vital community services may receive contribution

surcharges unless they have a primary purpose to prevent crime, encourage crime reporting or assist in the apprehension of offenders.

Because a court's authority to order contribution surcharges derives from the statutes, nothing prevents the Legislature from amending current law to address your concerns. For example, through an appropriate amendment, the Legislature could authorize courts to create court committees to distribute contribution surcharges. Likewise, just as it did after the *Bizzle* decision, the Legislature could eliminate the limitation that organizations receiving contribution surcharges have as their "primary purpose preventing crime, encouraging the public to report crime or assisting law enforcement agencies in the apprehension of criminal offenders." 1999 Wis. Act 69. Such an amendment would clarify this issue and serve the public interest in ensuring safer communities through the worthy programs and objectives such organizations promote.

Very truly yours,

Peggy A. Lautenschlager
Attorney General

PAL:jjn

Supreme Court of Wisconsin

DIRECTOR OF STATE COURTS
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Shirley S. Abrahamson
Chief Justice

16 East State Capitol
Telephone 608-266-6828
Fax 608-267-0980

A. John Voelker
Director of State Courts

October 16, 2007

The Honorable Mark Gundrum
Chair, Assembly Committee on Judiciary and Ethics
Room 119 West, State Capitol
Madison, Wisconsin

RE: AB 472, Eliminating Payments to Crime Prevention Organizations

Dear Representative Gundrum:

The Committee of Chief Judges strongly supports Assembly Bill 472 that would eliminate the authority of the courts to impose crime prevention organization (CPO) assessments. CPO assessments have caused endless concerns to judges, clerks of court, court administrators and legislators since their inception. We have studied the CPO assessment process at great length and concluded the most appropriate public policy is to request that they be eliminated.

There is no question the organizations that receive funding via CPO contributions are extremely worthwhile organizations. This legislation should not be viewed as a judgment about the work or the worthiness of those organizations.

Many judges have individually made the decision to terminate the CPO process in their counties. In the Ninth Judicial Administrative District, the judges adopted a uniform policy to refrain from imposing CPO assessments. The problem with CPO assessments is the nature of the process itself. We have identified the following concerns that lead us to this recommendation:

It is inappropriate for the court system to serve as a "fund raising mechanism" for noncourt organizations

Judges are strictly forbidden from fundraising for any organization on their own time. Fundraising via their role as judicial officers for CPOs appears to undercut the ethical tenets by which we operate. Most judges feel collecting money for noncourt organizations is not the proper role for a court, regardless of the value of the organization. Judges have found themselves subject to lobbying by various groups seeking funding, and that is of significant concern.

The public perception of this process is generally negative, regardless of the safeguards put into place.

Donations to a CPO are often perceived as a means for a defendant to buy his or her way out of either more serious charges or a more serious sentence. The direction of money to CPOs

by the courts inevitably results in a perception of bias concerning the judiciary, a perception that negatively impacts the image of the court and undercuts the validity of the court process. Justice should be blind to a person's ability to pay money.

The definition of a crime prevention organization has never been fully clarified although the courts have attempted to do so.

It has always been difficult to clearly identify what constitutes a "crime prevention organization." The lack of clarity has led to litigation challenging some CPO assessments. Judges are left with only minimal guidance when requests are made from charities, groups or organizations to be included among those to share in CPO funds. We have attached a 2005 opinion from the Attorney General's office that outlines some of the definitional and practical problems of CPOs.

The collection process in most counties is already strained from efforts to collect the statutory mandated fines, forfeitures, assessments and surcharges.

Adding on discretionary CPO assessments to criminal convictions simply increases the burden on the county Clerks of Circuit Court offices. Although the concept of "making the criminals pay" for CPOs is a worthy one, in this time of economic difficulties the taxpayers are better served by the increased collection of fines and forfeitures which directly fund county and state budgets.

The potential for abuse or for questionable practices involving CPOs can be avoided.

We have been fortunate that no major abuses of CPO assessments have been uncovered, but the potential for that abuse is real. There have been questionable practices uncovered involving CPO assessments. These problematic situations were enough to convince us collectively that the CPO process is seriously flawed.

The Committee of Chief Judges has reviewed the CPO process for some time and has expressed significant concern about it for a long period of time. Also, the court system's Policy and Planning Advisory Committee (PPAC) has also been concerned with the CPO process and, in particular, compliance with the reporting/nonreporting requirements. That committee is supportive of legislation to eliminate the CPO process.

We thank you for holding a public hearing on AB 472 and urge you to recommend it for passage. We believe you will agree that it will be sound public policy.

Respectfully submitted,

KITTY BRENNAN
Chief Judge
First Judicial District

JOHN STORCK
Chief Judge
Sixth Judicial District

GERALD PTACEK
Chief Judge
Second Judicial District

WILLIAM DYKE
Chief Judge
Seventh Judicial District

J. MAC DAVIS
Chief Judge
Third Judicial District

SUE BISCHEL
Chief Judge
Eighth Judicial District

DARRYL DEETS
Chief Judge
Fourth Judicial District

DOROTHY BAIN
Chief Judge
Ninth Judicial District

C. WILLIAM FOUST
Chief Judge
Fifth Judicial District

BENJAMIN PROCTOR
Chief Judge
Tenth Judicial District

State of Wisconsin
2011 – 2012 LEGISLATURE

DUE FRIDAY

LRB-1818/1
PJH:...

2011 BILL

4-11-11

X Gen

AN ACT ...; **relating to:** making a contribution to a crime prevention organization as a surcharge or as an allowable cost in a criminal case, as a condition of probation, or as a surcharge in a forfeiture case.

Analysis by the Legislative Reference Bureau

This bill allows a circuit court or a municipal court to order a person who violates an ordinance that is the same as or similar to a criminal statute to make a contribution surcharge to certain qualifying organizations (crime prevention organizations). The bill also allows a circuit court in a criminal action to require a person who is found guilty of a crime to make a contribution surcharge in lieu of or in addition to a fine or certain court costs or, if the court places the person on probation, as a condition of probation.

Under the bill, a court that requires a contribution surcharge must determine that the person has the financial ability to make the contribution and, in a forfeiture case, the amount of the surcharge may not exceed the maximum amount of the forfeiture for the violation. In a criminal case, the court must also determine that that the contribution is appropriate under the facts of the case.

Under the bill, if a court imposes a contribution surcharge but does not require the person to pay a forfeiture, fine, or court costs, the court shall state on the record the reasons why it is not requiring the person to pay the forfeiture, fine, or court costs.

Under the bill, a crime prevention organization may be a private, nonprofit organization that has as its primary purpose preventing crime, encouraging the public to report crime, or assisting law enforcement agencies in the apprehension of

criminal offenders or a law enforcement agency that has a crime prevention fund, if the contribution is credited to the crime prevention fund and is used for crime prevention purposes. The bill requires any crime prevention organization that receives a contribution surcharge to submit a report annually to the clerk of the court that ordered the contribution. The report must list the names of the officers of the organization, the amount of contributions the organization received and the names of the contributors, how the contributions were spent, and the balance, if any, remaining at the time the report is made.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 753.40 of the statutes is created to read:

753.40 Contributions to certain organizations and agencies. **(1)** If a circuit court finds in a forfeiture action that a person violated an ordinance that prohibits conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment, the circuit court may require, under ch. 814, the person to make a contribution surcharge not to exceed the maximum amount of the forfeiture that may be levied to an organization or agency specified in s. 973.06 (1) (f) 1. if the court determines that the violator has the financial ability to make the contribution.

(2) If the court does require a person to make a contribution surcharge to an organization or agency specified in s. 973.06 (1) (f) 1. but does not require the person to pay a forfeiture or court costs, the court shall state on the record the reasons why it is not requiring the person to pay the forfeiture or court costs. All contribution surcharges made under this section shall be made to the clerk of circuit court for distribution to the organization or agency specified in s. 973.06 (1) (f) 1. The circuit court may not require a person to make a contribution surcharge under this section

to an organization or agency specified in s. 973.06 (1) (f) 1. that has not complied with the provisions of s. 757.17.

SECTION 2. 755.20 of the statutes is created to read:

755.20 Contributions to certain organizations and agencies. **(1)** If a municipal court finds in a forfeiture action that a person violated an ordinance that prohibits conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment, the municipal court may require the person to make a contribution not to exceed the maximum amount of the forfeiture that may be levied to an organization or agency specified in s. 973.06 (1) (f) 1. if the court determines that the violator has the financial ability to make the contribution.

(2) If the court does require a person to make a contribution to an organization or agency specified in s. 973.06 (1) (f) 1. but does not require the person to pay a forfeiture or court costs, the court shall state on the record the reasons why it is not requiring the person to pay the forfeiture or court costs. All contributions made under this section shall be made to the municipal court for distribution to the organization or agency specified in s. 973.06 (1) (f) 1. The municipal court may not require a person to make a contribution under this section to an organization or agency specified in s. 973.06 (1) (f) 1. that has not complied with the provisions of s. 757.17.

SECTION 3. 757.17 of the statutes is created to read:

757.17 Reporting by certain organizations and agencies. Every organization or agency specified in s. 973.06 (1) (f) 1. that receives a contribution under s. 753.40, 755.20, 973.06 (1) (f), or 973.09 (1x) shall submit a report annually by February 1 to the clerk of the court that ordered the contribution. The report shall

be on a form designed and provided by the director of state courts and shall include all of the following information for the calendar year preceding the submittal of the report:

(1) The amount of contributions received.

(2) The names of the persons who made the contributions.

(3) The expenditures made with the contributions.

(4) The balance of the contributions remaining.

(5) The name of the organization or agency that received the contribution and the names of the officers of the organization or agency.

SECTION 4. 814.75 (4) of the statutes is created to read:

814.75 **(4)** The crime prevention organization contribution surcharge under s. 753.40, 973.06 (1) (f), or 973.09 (1x).

SECTION 5. 814.76 (3) of the statutes is created to read:

814.76 **(3)** The crime prevention organization contribution surcharge under s. 753.40, 973.06 (1) (f), or 973.09 (1x).

SECTION 6. 814.77 (3) of the statutes is created to read:

814.77 **(3)** The crime prevention organization contribution surcharge under s. 753.40, 973.06 (1) (f), or 973.09 (1x).

SECTION 7. 814.78 (4) of the statutes is created to read:

814.78 **(4)** The crime prevention organization contribution surcharge under s. 753.40, 973.06 (1) (f), or 973.09 (1x).

SECTION 8. 814.79 (3) of the statutes is created to read:

814.79 **(3)** The crime prevention organization contribution surcharge under s. 753.40, 973.06 (1) (f), or 973.09 (1x).

SECTION 9. 814.80 (4) of the statutes is created to read:

814.80 **(4)** The crime prevention organization contribution surcharge under s. 753.40, 973.06 (1) (f), or 973.09 (1x).

SECTION 10. 814.81 (4) of the statutes is created to read:

814.81 **(4)** The crime prevention organization contribution surcharge under s. 753.40, 973.06 (1) (f), or 973.09 (1x).

SECTION 11. 973.06 (1) (f) of the statutes is created to read:

973.06 **(1)** (f) 1. An amount determined by the court to make a reasonable contribution surcharge to any of the following, if the court determines that the person has the financial ability to make the contribution surcharge and the contribution surcharge is appropriate:

a. A private nonprofit organization that has as its primary purpose preventing crime, encouraging the public to report crime, or assisting law enforcement agencies in the apprehension of criminal offenders.

b. A law enforcement agency that has a crime prevention fund, if the contribution is credited to the crime prevention fund and is used for crime prevention purposes.

2. If the court does require a person to make a contribution surcharge to an organization or agency specified in subd. 1. but does not require the person to pay any fine that may be imposed for the offense or court costs, the court shall state on the record the reasons why it is not requiring the person to pay the fine or court costs. All contribution surcharges made under this paragraph shall be made to the clerk of circuit court for distribution to the organization or agency specified in subd. 1. The court may not order a person to make a contribution surcharge under this paragraph to a crime prevention organization that has not complied with the provisions of s. 757.17.

SECTION 12. 973.09 (1x) of the statutes is created to read:

973.09 **(1x)** (a) If the court places a person on probation, the court may require, under ch. 814, that the probationer make a contribution surcharge to an organization or agency specified in s. 973.06 (1) (f) 1. if the court determines that the probationer has the financial ability to make the contribution surcharge.

(b) If the court does require a person to make a contribution surcharge to an organization or agency specified in s. 973.06 (1) (f) 1. but does not require the person to pay any fine that may be imposed for the offense or court costs, the court shall state on the record the reasons why it is not requiring the person to pay the fine or court costs. All contribution surcharges made under this subsection shall be made to the clerk of circuit court for distribution to the organization or agency specified in s. 973.06 (1) (f) 1. The court may not require a person to make a contribution surcharge under this subsection to an organization or agency specified in s. 973.06 (1) (f) 1. that has not complied with the provisions of s. 757.17.

(END)

Basford, Sarah

From: Murphy, Michael
Sent: Monday, October 31, 2011 1:44 PM
To: LRB.Legal
Subject: Draft Review: LRB 11-1818/1 Topic: Contributions to crime prevention organizations

Please Jacket LRB 11-1818/1 for the ASSEMBLY.